

**Public Records Study Committee**  
 Summary of Committee Action in 2011–2012  
 October 4, 2013

**A. BACKGROUND**

- The Public Records Study Committee was created by Sec. 11 of Act 59 of 2011.<sup>1</sup> The committee will cease to exist on January 15, 2015.
- The Committee is charged with reviewing the requirements of the Public Records Act (PRA) and all of the exemptions to the PRA. The Committee is directed to submit an annual report prior to each legislative session with recommendations as to whether the PRA, and the exemptions to it, should be repealed, amended, or remain unchanged.
- Subsec. (c) of Sec. 11 of Act 59 also specifies certain topics that the Committee “may” review, including whether the PRA requires revision; whether each exemption is necessary, antiquated, or in need of revision and is as narrowly tailored as possible; whether the PRA should be amended to clarify its application to government contractors; the topic of staff time charges; and whether municipalities should be required to appoint an official responsible for advising the municipality regarding the requirements of the PRA and proper management of public records.

**B. SUMMARY OF COMMITTEE ACTIVITIES, AND LEGISLATIVE RESPONSES**

**Fall 2011 Committee Activity**

- The Committee categorized and prioritized review of certain categories of PRA exemptions, after soliciting input from numerous interested parties.
- The Committee considered 64 exemptions related to general government; tax; health care; personal information; and university research.
- Of these 64, the Committee stated that it would review 11 in subsequent years.
- In total, the Committee made recommendations on 53 exemptions. Of these 53, the committee recommended that 30 be kept in their existing form; 12 be amended; 4 be repealed or considered for repeal; 6 be reviewed by committees of jurisdiction; and 1 be removed from the list of exemptions.
- The Committee considered other issues including:
  - i. whether the PRA itself requires revision. It found that the PRA did not generally need to be revised (in terms of its framework regarding inspection, access, and procedure) though it did recommend that certain exemptions be revised.
  - ii. the application of the PRA to contractors. After hearing significant testimony, it took no position on this issue, but recommended that the Government Operations committees in coordination with other jurisdictional committees review the issue.
- For complete details, see the January 2012 report at <http://www.leg.state.vt.us/reports/2012ExternalReports/276082.pdf>

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<sup>1</sup> See <http://www.leg.state.vt.us/DOCS/2012/ACTS/ACT059.PDF>

### **2012 Legislative Activity Relating to Committee Recommendations**

- Act No. 70 enacted hold harmless language for municipalities that disclosed property tax adjustment information.
- Act No. 143, § 5 clarified the public nature of property tax adjustment information.
- Act No. 171, § 24f required that at a minimum, community reports include data from all Vermont hospitals of reportable adverse events aggregated in a manner to protect patient privacy.
- Act No. 171, § 41 repealed the health care insurance reimbursement survey under 18 V.S.A. § 9409a and the exemption within it.

### **Fall 2012 Committee Activity**

- The Committee was updated on exemptions that were new in 2011–2012.
- The Committee reviewed exemptions related to financial regulation; human services; commerce; education; energy and public utilities; and corrections.
- In total, the Committee considered 93 exemptions<sup>2</sup> and made recommendations concerning 72 of them; it stated that the remaining 21 would continue to be reviewed by the Committee in subsequent years.
- Of the 72 exemptions for which the Committee made recommendations, it recommended that 41 be kept in their existing form; 10 be amended; 1 be repealed; 11 be reviewed by committees of jurisdiction; and 9 be removed from the list of exemptions.
- The Committee heard a report from Brian Leven, Deputy Secretary of State, on the results of a survey of municipalities regarding public records requests (see § 14 of Act 59 of 2011). Because the survey results indicated that municipalities do not keep data consistently, the committee voted unanimously to repeal the annual survey requirement.
- The Committee recommended a policy related to review of PRA exemptions by Government Operations Committees, as well as a checklist for review of exemptions.
- The Committee recommended an amendment to the APA to require agencies to identify when a proposed rule creates a PRA exemption.
- The Committee recommended that the committees of jurisdiction review the Medical Marijuana Law to determine whether and how provisions concerning the confidentiality of dispensary applications should be clarified.
- The Committee requested that the committees of jurisdiction review the standard and process by which trade secrets are asserted in Vermont.
- For complete details, see the January 2013 report at <http://www.leg.state.vt.us/reports/2013ExternalReports/285233.pdf>

### **2013 Legislative Activity Relating to Committee Recommendations**

- Act 3 repealed the annual survey of municipalities required under § 14 of Act 59 of 2011.
- The Judiciary committees took up 1 V.S.A. § 317(c)(5), the crime detection and investigation exemption, leading to the passage of Act 70. Act 70 replaced the former categorical exemption with a FOIA-derived balancing test that only exempts criminal investigation records from disclosure if production of the records would interfere with enforcement proceedings, deprive a person of a right to a fair trial, constitute an unwarranted invasion of personal privacy, disclose the identity of a confidential source,

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<sup>2</sup> Of the 93 exemptions considered in 2012, 9 had previously been reviewed in 2011.

disclose techniques and procedures for law enforcement investigations or prosecutions, or endanger the life or physical safety of any individual.

- House Rule 25 and Senate Rule 24 were amended to clarify the jurisdiction of the Government Operations Committees over public records and open meeting issues.
- The House Government Operations Committee considered several versions of H.54, which would have implemented the Study Committee's 2011 and 2012 recommendations. The Gov Ops Committee heard a significant amount of testimony, some of which caused it to consider changes to the Study Committee's recommendations. After consulting with leadership, the Gov Ops Committee changed course, deciding not to recommend a series of changes to various exemptions, but instead recommending a strike-all that would require Legislative Council to draft a bill reorganizing and consolidating Public Records Act exemptions. This became Act 23.<sup>3</sup>

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<sup>3</sup> Available at <http://www.leg.state.vt.us/DOCS/2014/ACTS/ACT023.PDF>